

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 95-44
)
Amendment of Section 73.202(b),) RM-8602
Table of Allotments,)
FM Broadcast Stations,)
(Fair Bluff, North Carolina))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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REPLY TO COMMENTS

Atlantic Broadcasting Co., Inc. ("Atlantic"), by and through counsel, and pursuant to §1.415 of the Commission's Rules (47 C.F.R. §1.415), hereby submits its Reply to Comments filed in response to the Notice of Proposed Rulemaking, DA 95-725, released April 14, 1995 ("NPRM") in the above-captioned proceeding.¹ In support whereof, the following is shown:

Background

1. Atlantic is the licensee of WDAR-FM, Darlington, South Carolina. WDAR-FM operates on Channel 288C3 with a directional antenna to protect the vacant allotment of Channel 287A at Fair Bluff, North Carolina.² If the Fair Bluff

¹ The deadline for filing reply comments is June 20, 1995, so this reply is timely filed.

² In its Comments filed June 5, 1995, Atlantic noted that Channel 287A at Fair Bluff has been vacant for several months. A construction permit (File No. BPH-8903132MQ) with call sign "WWIR(FM)" on the Fair Bluff channel was held by Great American Media Ltd. I. By letter dated August 31, 1994, the Commission acknowledged the voluntary relinquishment of the construction permit by Great American Media Ltd. I, cancelled the construction permit and deleted the call sign WWIR.

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allotment were deleted, WDAR-FM would be permitted to modify its license to operate as an omni-directional station. In its "Petition For Rulemaking" ("Petition") filed February 8, 1995, Atlantic requested that the Commission delete the vacant allotment on Channel 287A at Fair Bluff, North Carolina, or, in the alternative, that a 13 kilometer east site restriction be imposed on Fair Bluff Channel 287A. On February 24, 1995, Atlantic filed an application (File No. BPH-950224ID) to modify the facilities of WDAR-FM to operate with a non-directional antenna. In the technical statement included with Atlantic's Petition for Rulemaking, Atlantic showed that the vacant allotment of Channel 287A at Fair Bluff, North Carolina, is the sole impediment to a grant of the WDAR-FM modification application.

2. In the NPRM, the Commission found that "the public interest would be served by seeking comments on the proposed deletion or site restriction of Channel 287A at Fair Bluff...." NPRM at ¶3. The Commission acknowledged that deleting the Fair Bluff allotment or imposing a site restriction would permit WDAR-FM to expand its coverage area. In addition, the Commission noted that deletion of Channel 287A at Fair Bluff would not deprive the community of radio service, since it is presently served by WJHB(AM). NPRM at ¶2. However, the Commission stated that it would not delete Channel 287A at Fair Bluff if there were a timely-filed expression of interest in the vacant allotment.

Reply to Comments

3. Three Comments were filed during the comment period. Robert Gauss, appearing pro se, and Jack Miller, appearing through counsel, both expressed interest in filing an application for the allotment. Mr. Miller expressly stated that he has no objection to the Commission imposing a site restriction to accommodate WDAR-FM. S.O.S. Broadcasting ("S.O.S"), through counsel, filed "Comments and Expression of Interest" stating an intention to apply for a construction permit for the allotment, but is the only one of the three commenting parties to oppose imposition of a site restriction. S.O.S. gives as its reasons for opposition (1) alleged "limited principal contour coverage," and (2) imagined "general regulatory difficulties in establishing transmitting tower sites" that "may make it extremely difficult, if not impossible, to locate an acceptable site." As shown infra, S.O.S. is wrong on both counts. There is no public interest reason preventing the imposition of a site restriction on the Fair Bluff allotment.

4. Submitted herewith, and incorporated herein by reference, is a "Technical Reply to Comments" prepared by Atlantic's technical consultant. Therein it is shown that both concerns of S.O.S. are unfounded. Atlantic personnel located a proposed site (at N. latitude 34 deg. 21' 08", W. long. 78 deg. 54' 07") only 0.86 km from the suggested reference coordinates that could be specified in an application for construction permit. From that site, the proposed station would deliver a principal community contour signal over Fair Bluff. Further, it was not at all difficult for Atlantic's personnel to obtain permission to construct a transmitting facility at the site. Atlantic personnel also checked with local governing officials who stated that they did

not see any reason why a building permit should not be issued for the proposed facility and that local zoning would not be a problem. The technical report indicates that the major concern of the local officials was receipt of FCC and FAA authority. Atlantic has already applied for FCC authority, and the technical consultant opines that it is his firm's experience that the proposed 105 meter tower at the site would have no aeronautical effect. Thus, S.O.S.'s objections have been shown to be completely unfounded.

5. The public interest will be served by imposition of the site restriction on the Fair Bluff channel. The technical statement shows that by deleting WDAR-FM's directional antenna, the population within the WDAR-FM 1.0 mV/m contour would increase from 177,688 to 181,509. That meets the requirements of the Commission as set forth in Andalusia, Alabama, 49 Fed. Reg. 32201 (1984) cited by S.O.S. In that case, the Commission stated that it would prefer a proposed change to an existing facility over a proposed new allotment where there was a public interest justification overriding the need for new service. In this case, the Commission does not have to make the choice between new or enhanced service. The imposition of a site restriction on the vacant Fair Bluff allotment will permit that allotment to remain viable while permitting enhanced service for the community of Darlington. Therefore, there will be no loss of service if the Commission grants Atlantic's proposal. Fair Bluff will retain its FM service and WDAR-FM will be permitted to provide enhanced FM service to more than 3,800 additional persons.³ Further, at least two parties have

³ Since the WDAR-FM upgrade does not include a proposal to change the tower site of the station, there will be no loss of service. See, Andalusia, Alabama, supra, where the Commission stated that a public interest justification must include a consideration of potential

expressed interest in filing applications for the site-restricted allotment, so it is highly unlikely that the channel will continue to lie fallow.

The Public Interest Would Be Served By Deleting Channel 287A At Fair Bluff Or Imposing A Site Restriction

6. Atlantic's first choice is the deletion of the Fair Bluff allotment, but in light of the expressions of interest, that option does not appear to be a likely result. However, Atlantic has amply demonstrated that the public interest would be served by either the deletion of Channel 287A at Fair Bluff or by the imposition of a site restriction. The allotment has been vacant since August, 1994. The deletion or site restriction of Channel 287A will permit WDAR-FM to provide enhanced service to the community of Darlington, South Carolina, without any loss of service to either Fair Bluff or Darlington.⁴

Conclusion

7. Atlantic has demonstrated that a grant of its Petition For Rulemaking would serve the public interest. Enhanced service to the community of Darlington, South Carolina, will result if the Commission deletes or restricts the vacant allotment of Channel 287A at Fair Bluff, North Carolina. The complaints of S.O.S. Broadcasting are unfounded and should not prevent the Commission from granting Atlantic's proposal.

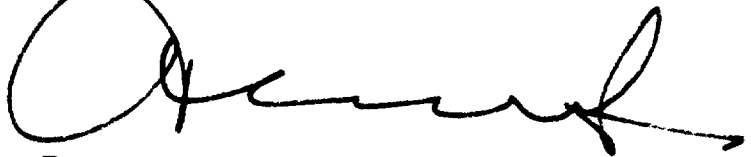
loss of service as well as gain areas.

⁴ The Commission noted that the site restriction coordinates requested by Atlantic (34-21-22 North Latitude and 78-54-36 West Longitude), are short-spaced to Station WYNA, Channel 285A, Tabor City, North Carolina and WNMB, Channel 288A, North Myrtle Beach, South Carolina. However, both Stations have proposed changes to their facilities that would eliminate the short-spacings to Atlantic's rulemaking proposal. Station WYNA has been modified to specify operation on Channel 285C3 in MM Docket No. 93-249 and Station WNMB's license has been modified to Channel 290C3 in MM Docket No. 89-326.

WHEREFORE, the above-premises considered, Atlantic Broadcasting Co., Inc. respectfully requests that the Commission delete Channel 287A or restrict its potential site as requested herein. In addition, Atlantic respectfully requests that the Commission grant its pending application to modify of the license for WDAR-FM, Darlington, South Carolina, in order to permit the station to operate as an omni-directional station. Should the Commission grant Atlantic's rulemaking proposal and subsequently grant its application for modification of license, Atlantic will apply for requisite authority and promptly make the necessary changes to WDAR-FM in order to begin operating as a omni-directional station.

Respectfully submitted,

ATLANTIC BROADCASTING CO., INC.

A handwritten signature in black ink, appearing to read "Gary S. Smithwick", written over a horizontal line.

By: _____

Gary S. Smithwick
Shaun A. Maher

Its Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
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June 20, 1995

MM Docket No. 95-44 - RM-8602
TECHNICAL REPLY TO COMMENTS

Site Restriction Channel 285A
Fair Bluff, North Carolina
June 1995

Reply To Comments

It has been proposed by Atlantic Broadcasting Co., Inc. ("Atlantic"), licensee of WDAR-FM Radio Station in Darlington, South Carolina to either delete or site restrict Channel 287A at Fair Bluff, North Carolina. During the comment period of this proposal three additional parties filed expressions of interest for the Fair Bluff channel and asked that the channel not be deleted. Two of these parties filed expression of interest to file for the channel with no additional comments as to the site restriction. The remaining comment by S.O.S. Broadcasting ("SOS") is an expression of interest and also objects to the Atlantic proposal to site restrict the Channel.

Atlantic's interest in this proceeding is to be able to delete the WDAR directional antenna. WDAR is shortspaced under Section 73.207 to the Allocation site of Channel 287A at Fair Bluff. Therefore, Atlantic proposed to either delete the unused Channel 287A at Fair Bluff or if there were expressions of interest filed for the channel to simply site restrict the Channel to a location that would clear the present WDAR shortspace. By deleting the directional antenna the population within the 1.0 mV/m contour would increase from 177,688 to 181,509. Since expressions of interest have been filed for Channel 287A we will focus on site restricting the channel.

As mentioned above, only one comment by (SOS) objected to a site restriction. We selected a reference point (North Latitude 34° 21' 22", West Longitude 78° 54' 36") and this site meets all current FM spacing under §73.207(b). From this site a 3.16 mV/m contour will be placed over the entire community of license. Therefore, this reference site meets all requirements for Channel 287A for Fair Bluff, North Carolina. The SOS opposition to the site restriction is based on a very generalized statement:

"...Given the limited principal community contour coverage capability of a Class A FM station, such a site restriction could seriously impair the viability of the channel. Given the current general local regulatory difficulties in establishing transmitting tower sites, the site restriction proposed may make it extremely difficult, if not impossible, to locate an acceptable site..."

This generalized statement could be made virtually about any FM site in the country with no significance to this case.

Atlantic has found a site and obtained permission to build a Channel 287A radio tower at North Latitude 34° 21' 08" and West Longitude 78° 54' 07." As can easily be seen this site is very close (0.86 km) to the site we originally proposed as a reference point.

We have included a tabulated allocation study (Exhibit #1) and a proposed coverage map (Exhibit #3) from the available site that shows Channel 287A can be located at this site meeting all spacing restrictions of §73.207(b) and providing coverage to the entire community of license. Additionally, we have included a Usable Area Map (Exhibit #2) showing additional areas where Channel 287A can be located under the provisions of §73.207(b). Exhibit #2 shows more than ample space to locate.

SOS voiced a concern that "...Given the current general local regulatory difficulties in establishing transmitting tower sites, the site restriction proposed may make it extremely difficult, if not impossible, to locate an acceptable site...". Because of that statement Atlantic personnel contacted local governing officials with the Columbus County, North Carolina building permit office. These officials stated they did not see any reason why a building permit should not be issued for the proposed facility and that local zoning would not be a problem. Their major concern would be that all Federal permits (FCC & FAA) were obtained. The proposed site is about 20 km from the closest airport (Columbus County). This firm has extensive experience with the FAA and radio towers. It is our experience and opinion that the proposed 105 meter tall tower from this site will have no aeronautical effect.

The proposed Allocation Reference Point is acceptable to all FCC regulations. This Channel can be site restricted to the special reference point. There is more than ample area to locate a site. Atlantic has further proven that there is an available site. Additionally, local officials in the building permit office feel there is no local reason why a building permit cannot be issued. Therefore, the SOS concerns about site unavailability are totally unfounded. It is clear there is available land in this rural area of North Carolina to build a radio station. This proposal is in the public interest since the

site restriction as proposed will allow WDAR to eliminate its §73.207 shortspace and delete its directional antenna, thus improving its signal to additional population.

Bromo Communications, Inc.

A handwritten signature in black ink, reading "William G. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

William G. Brown
Consultant to Atlantic Broadcasting, Inc.

BROMO COMMUNICATIONS INC

(706) 782-7222 - (202) 429-0600

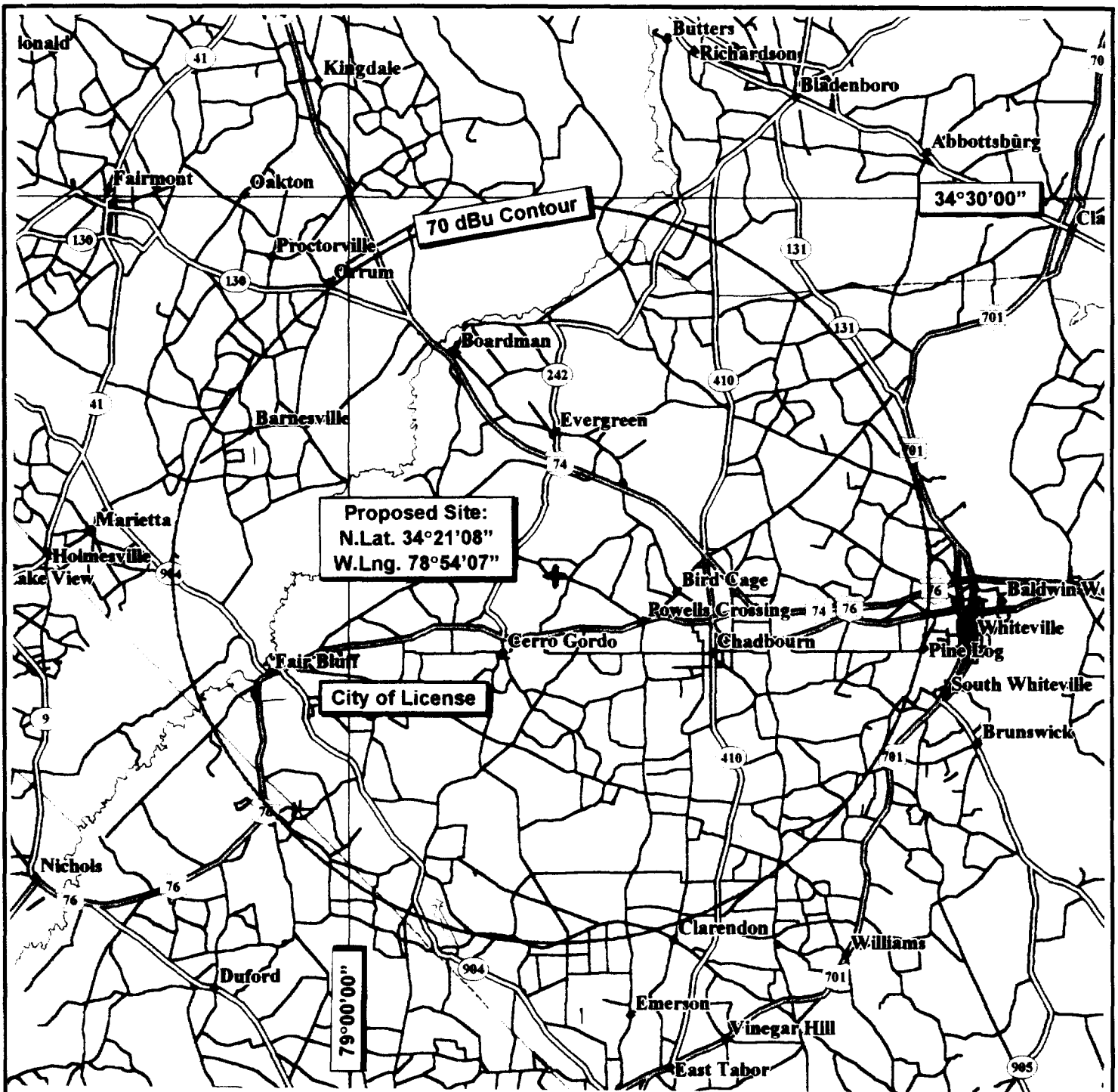
*Allocation Study for Fair Bluff, NC Using
Proposed Site as Ref. Point*

REFERENCE		DISPLAY DATES
34° 21' 08" N Lat	CLASS A	DATA 04-26-95
78° 54' 07" W Lng	Current rules spacings	SEARCH 06-14-95
----- CHANNEL 287 -105.3 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD287	287A	Fair Bluff	NC	300.2	0.86	115.0	-114.14 *
<i>(Site as proposed by Atlantic Broadcasting WDAR)</i>							
ALOPEN	287A	Fair Bluff	NC	268.7	17.31	115.0	-97.69 *
<i>(Original Allocation Site)</i>							
WNMB	288A	North Myrtle Beach	SC	168.4	60.04	72.0	-11.96 *
<i>(WNMB now operates on Channel 290C3 per docket 89-327)</i>							
WYNA	285A	Tabor City	NC	170.5	22.74	31.0	-8.26 *
<i>(Channel 285A has been deleted from Tabor City in favor of Channel 285C3 at Calabash, NC per docket 93-249)</i>							
WDARFM	288C3	Darlington	SC	267.5	90.83	89.0	1.83 <
<i>(Proposed site clears WDAR under §73.207(b) and allows WDAR to delete directional antenna under §73.215.)</i>							
ALOPEN	285C3	Calabash	NC	132.2	46.91	42.0	4.91
WDCG	286C	Durham	NC	352.1	170.24	165.0	5.24
WGQR	289A	Elizabethtown	NC	40.0	39.83	31.0	8.83
WRHA.C	286A	Johnsonville	SC	226.3	86.04	72.0	14.04
WNMB.C	290C3	North Myrtle Beach	SC	162.8	57.80	42.0	15.80
WDARFM	288A	Darlington	SC	267.5	90.83	72.0	18.83
WDARFM	288A	Darlington	SC	267.5	90.83	72.0	18.83
WXQRFM	288C2	Jacksonville	NC	82.1	134.94	106.0	28.94
DE287	287C3	Moncks Corner	SC	216.9	174.66	142.0	32.66
WJYQ.C	287C3	Moncks Corner	SC	216.9	174.66	142.0	32.66

Exhibit #1

MM Docket No. 95-44 - RM-8602
Technical Reply To Comments
Site Restriction Channel 285A
 Fair Bluff, North Carolina
 June 1995



Proposed 70 dBu Contour

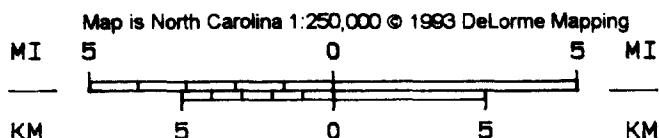


Exhibit #3

MM Docket No. 95-44 - RM-8602
Technical Reply To Comments
Site Restriction Channel 285A
 Fair Bluff, North Carolina
 June 1995

BROMO
COMMUNICATIONS

BROADCAST
 TECHNICAL CONSULTANTS

CERTIFICATE OF SERVICE

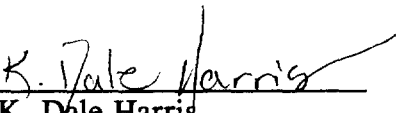
I, K. Dale Harris, a legal assistant in the law firm of Smithwick & Belendiuk, P.C., certify that on this 20th day of June 1995, copies of the foregoing were mailed, first class, postage prepaid, to the following:

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